IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4345 OF 2006

Shri Vinayak Bajirao Thakar & Anr. .. Petitioners.
Vs.
Shri Yogesh Vijay Kulkarni & Anr. .. Respondents.

Mr.A.V.Anturkar i/b Shri Sugandh B.Deshmukh for the petitioners.
Mrs.A.N.Helekar for respondent no.1.

CORAM : D.B.BHOSALE, J.

DATED : 3RD OCTOBER, 2006

P.C.:

. Heard learned counsel for the petitioners and respondent no.1.

2. Rule, returnable forthwith. By consent of the parties the petition is taken up for final hearing. Mrs.Helekar, learned counsel waives service for respondent no.1.

3. This petition is directed against the order dated 3.10.2005 passed on Civil Miscellaneous Appeal No.410 of 2004 by which the appeal filed by the petitioners-defendants has been dismissed as not maintainable. The appeal was directed against the orders dated 6.8.2004 and 6.10.2004. By the order

dated 6.8.2004, the trial Court refused to take on file the written statement placed on record by the petitioner on 25.6.2004 whereas by order dated 6.10.2004 the application at Exhibit-29 has been disposed of by the following order:

> . "In the decisions 2004(1) ALL M.R.418 and 2004(2) MLJ 1058 it is held by Honourable High Court that outer limit of 90 days for filing written statement cannot be extended. Hence in view of decisions cited supra of Honourable Bombay High Court the decision in AIR 2003 AP 409 is not of any benefit to defendant.
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> . Even now it is recent Law that defendant is not entitled for extension of outer limit of 90 days for filing written statement unless the defendants makes out any ground beyond his control which prevented him from filing written statement. The defendants in this case neither pleaded nor made out any ground beyond his control, which prevented him from filing written statement. Therefore, the application is infructuous."

4. The aforesaid two orders were challenged in appeal. It is apparent from the aforesaid order dated 6.10.2004, that it is based on the judgment of this court in **2004 (1) ALL M.R.418 and Prabhakar Madhavrao Mule Vs. Bhagwan Mitharam Choudhari 2004(2) Mh.L.J.1058** which is no more a good law. In view thereof I am inclined to set aside both the orders hence the following order:

(a) The orders dated 6.8.2004 and 6.10.2004 are quashed and set aside. The trial Court shall consider

the prayer of the petitioners to take their written statement on record in the light of judgment of this Court in **Chintaman Sukhdeo Kaklij & Others Vs. Shivaji Bhausaheb Gadhe & Others 2004(5) Bom.C.R.573** afresh after giving an opportunity of being heard to both the parties and decide the same as expeditiously as possible and within a period of four weeks from the date of receipt of this order.

(b) In view of the aforesaid directions the judgment of the appeal court dated 3.10.2005 passed on Civil Miscellaneous Appeal No.410 of 2004 renders ineffective. Similarly, "No written statement" order passed by the court below, if any, also renders ineffective.

. The writ petition is allowed in the aforesaid terms. All contentions are kept open.

(D.B.Bhosale, J.)